

Message Text

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E.O. 11652: GDS

TAGS: ENRG, CA

SUBJECT: POSSIBLE AGREEMENT ON ALCAN PROJECT
FOR ENDERS FROM TRIMBLE
FOLLOWING IS FIRST DRAFT OF PRELIMINARY AGREEMENT ON
PRINCIPLES APPLICABLE TO A NATURAL GAS PIPELINE FOR THE
TRANSPORTATION OF ALASKA NATURAL GAS THROUGH CANADA.

WHEREAS THE TWO GOVERNMENTS HAVE A COMMON INTEREST IN THE
CONSTRUCTION AND OPERATION OF A SYSTEM TO PROVIDE FOR THE
TRANSPORTATION OF ALASKA NATURAL GAS TO THE CONTIGUOUS
UNITED STATES AND TO FACILITATE THE POSSIBLE SUBSEQUENT
TRANSPORTATION OF NATURAL GAS FROM THE CANADIAN ARCTIC TO
SOUTHERN MARKETS IF AND WHEN SUCH BECOMES DESIRABLE;

WHEREAS THE AGREEMENT CONCERNING TRANSIT PIPELINES, SIGNED
AT WASHINGTON JANUARY 28, 1977, HEREINAFTER CALLED THE
PIPELINE TREATY, PROVIDES A GENERAL FRAMEWORK FOR THE
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CONSTRUCTION AND OPERATION OF SUCH A SYSTEM, AND PROVIDES
FOR PROTOCOLS FOR THE APPLICATION OF THE PIPELINE TREATY TO
SPECIFIC PIPELINES;

WHEREAS THE TWO GOVERNMENTS WISH TO CONSIDER FURTHER WHETHER
SUCH A PROTOCOL IS NECESSARY OR APPROPRIATE IN RESPECT OF
THE PROPOSED PIPELINE FOR THE TRANSPORTATION OF ALASKAN
NATURAL GAS; AND

WHEREAS, IN THE MEANTIME, IT IS DESIRABLE TO ESTABLISH
CERTAIN BASIC PRINCIPLES GOVERNING THE POSSIBLE CONSTRUC-

TION AND OPERATION OF SUCH A PIPELINE;

THE GOVERNMENT OF THE USA AND THE GOVERNMENT OF CANADA
HEREBY AGREE AS FOLLOWS:

1. AGREEMENT IN PRINCIPLE AND ROUTE OF THE PIPELINE.

THE PARTIES AGREE IN PRINCIPLE THAT THE CONSTRUCTION AND OPERATION OF A PIPELINE FOR THE TRANSMISSION OF ALASKA NATURAL GAS ALONG THE ROUTE SET FORTH IN ANNEX 1, HEREINAFTER CALLED THE PIPELINE, IS IN THEIR MUTUAL INTEREST AND THAT, SUBJECT TO LEGISLATIVE APPROVAL, THE PARTIES SHALL TAKE ALL NECESSARY ACTION TO AUTHORIZE THE CONSTRUCTION AND OPERATION OF THE PIPELINE IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT. THE PARTIES FURTHER AGREE EXPEDITIOUSLY TO SEEK AND TO USE THEIR BEST EFFORTS TO OBTAIN SUCH LEGISLATIVE APPROVAL. (ALTERNATIVE: THE PARTIES AGREE THAT, IN THE EVENT THAT SUBSEQUENTLY THEIR RESPECTIVE APPROVALS ARE GIVEN FOR THE CONSTRUCTION AND OPERATION OF A PIPELINE FOR THE TRANSMISSION OF ALASKA NATURAL GAS ACROSS CANADA TO THE CONTIGUOUS UNITED STATES, SUCH PIPELINE, HEREINAFTER CALLED THE PIPELINE, SHALL BE LOCATED ALONG THE ROUTE SPECIFIED IN ANNEX 1 AND THE PRO-
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VISIONS OF THIS AGREEMENT SHALL GOVERN THE AUTHORIZATION OF THE CONSTRUCTION AND OPERATION OF THE PIPELINE.)

2. EXPEDITIOUS CONSTRUCTION; TIMETABLE.

THE PARTIES SHALL FACILITATE THE EXPEDITIOUS ISSUANCE OF ALL NECESSARY PERMITS, LICENSES, CERTIFICATES, RIGHTS OF WAY, LEASES AND OTHER AUTHORIZATIONS REQUIRED FOR THE EXPEDITIOUS CONSTRUCTION AND OPERATION OF THE PIPELINE, WITH A VIEW TO MEETING THE FOLLOWING TIMETABLE:

COMMENCEMENT OF CONSTRUCTION

- ALASKA
- YUKON
- BRITISH COLUMBIA
- ALBERTA
- SASKATCHEWAN

INITIAL OPERATION OF PIPELINE

1.6 BCFD

2.4 BCFD

TO THAT END THE PARTIES SHALL, UNDER APPLICABLE LEGISLATION, TAKE STEPS TO LIMIT THE POSSIBILITY OF DELAY FROM

LITIGATION ON SOCIAL, ENVIRONMENTAL, NATIVE LAND CLAIMS, AND OTHER GROUNDS.

3. CAPACITY OF PIPELINE; AVAILABILITY OF GAS TO U.S. AND CANADIAN CONSUMERS.

(A) THE INITIAL CAPACITY OF THE PIPELINE SHALL BE AND, SUBJECT TO PARAGRAPH (B), SHALL BE AVAILABLE ENTIRELY TO CONSUMERS IN THE UNITED STATES.

(B) FROM ALASKAN GAS TRANSMITTED THROUGH THE PIPELINE THE
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PIPELINE OWNERS SHALL MAKE AVAILABLE A REASONABLE AMOUNT OF GAS TO MEET THE NEEDS OF THE REMOTE COMMUNITIES OF (ENUMERATE THE EIGHT COMMUNITIES) AND ANY OTHER REMOTE COMMUNITY WHICH REQUESTS SUCH GAS WITHIN A PERIOD OF TWO YEARS FOLLOWING COMMENCEMENT OF FULL OPERATION OF THE PIPELINE. THE CAPITAL COST NOT TO EXCEED \$ OF PROVIDING SUCH GAS TO THE EIGHT ENUMERATED COMMUNITIES SHALL BE PAID BY THE OWNER OF THE PIPELINE IN THE YUKON TERRITORY. THE CAPITAL COST OF PROVIDING SUCH GAS TO OTHER COMMUNITIES SHALL BE PAID BY THE OWNER OF THE PIPELINE IN THE STATE, PROVINCE OR TERRITORY WHERE SUCH COMMUNITY IS LOCATED, PROVIDED THAT SUCH OWNER SHALL NOT BE RESPONSIBLE, WITH RESPECT TO EACH COMMUNITY, FOR AN AMOUNT GREATER THAN THE PRODUCT OF \$2500 AND THE NUMBER OF CONSUMERS IN THE COMMUNITY OR \$, WHICHEVER IS LESS. THE GOVERNMENT OF CANADA SHALL ASSURE THAT AN ADDITIONAL AMOUNT OF GAS, EQUAL TO THE AMOUNT SO PROVIDED TO REMOTE COMMUNITIES IN CANADA, SHALL BE MADE AVAILABLE FOR EXPORT TO THE UNITED STATES OR FOR USE IN THE OPERATION OF THE PIPELINE. SUCH ADDITIONAL GAS SHALL BE TREATED AS HYDROCARBONS IN TRANSIT FOR PURPOSES OF THE PIPELINE TREATY.

(C) AT SUCH TIME AS A LATERAL PIPELINE TRANSMITTING NATURAL GAS FROM THE MACKENZIE DELTA IS CONNECTED TO THE PIPELINE AND THE OWNER IS READY, WILLING AND ABLE TO SHIP SUCH GAS, THE CAPACITY OF THE PIPELINE SHALL BE EXPANDED, IN ACCORDANCE WITH THE SPECIFICATIONS IN ANNEX 2 OR SUCH OTHER MANNER AGREED BY THE PARTIES FOR THE PURPOSE OF MAXIMIZING EFFICIENCY, AND SHALL BE AVAILABLE, SUBJECT TO SUBPARAGRAPH (B) ABOVE, AS FOLLOWS:

- TO U.S. CONSUMERS
- TO CANADIAN CONSUMERS

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TO THE EXTENT THAT THE CANADIAN CONSUMERS DO NOT TAKE THEIR FULL AVAILABLE CAPACITY, THE UNUSED PORTION SHALL BE AVAILABLE TO U.S. CONSUMERS.

(D) (PARAGRAPH ON COST SHARING, IF ANY, OF EXPANSION.)

(E) AT SUCH TIME AS MACKENZIE DELTA GAS IS SHIPPED THROUGH THE PIPELINE AS PROVIDED IN SUBPARAGRAPH (C), THE TARIFF APPLICABLE IN CANADA TO SHIPMENTS OF ALL GAS THROUGH THE PIPELINE SHALL BE UNIFORM AND SHALL BE BASED ON THE COMBINED COST OF THE ORIGINAL PIPELINE AND THE LATERAL LINE CONTEMPLATED IN SUBPARAGRAPH (C).

(F) THE GOVERNMENT OF CANADA SHALL PERMIT EXPANDED EXPORTS OF (INSERT QUANTITY) CANADIAN GAS TO THE UNITED STATES DURING THE PERIOD IN SATISFACTION OF EXISTING CONTRACTUAL COMMITMENTS OR IN EXCHANGE FOR SUBSEQUENT DELIVERIES OF EQUIVALENT AMOUNTS OF ALASKAN GAS TO CANADIAN CONSUMERS (IS PRICE AGREEMENT FEASIBLE?)

4. FINANCING.

THE PARTIES CONTEMPLATE THAT THE CONSTRUCTION AND OPERATION OF THE PIPELINE WILL BE PRIVATELY FINANCED, AND THAT THE EQUITY OF THE COMPANIES OWNING THE PIPELINE WILL BE AT LEAST ---- OF THE TOTAL COST OF THE PROJECT AND WILL BE AT RISK THROUGHOUT THE PROJECT. ACCORDINGLY, THE PARTIES SHALL NOT REQUIRE AN "ALL EVENTS" TARIFF FOR TRANSPORTATION OF THE NATURAL GAS COVERING RETURN OF OR ON EQUITY INVESTMENT. THE TARIFF FOR SUCH TRANSPORTATION, WHICH MAY INCLUDE AN "ALL EVENTS" ELEMENT COVERING THE COST OF DEBT SERVICE, SHALL NOT COMMENCE UNTIL THE OWNER IS READY, WILLING AND ABLE TO INITIATE OPERATION. THE RETURN ON EQUITY INVESTMENT SHALL BE COMPUTED ON THE BASIS OF A VARIABLE RATE OF RETURN, PROVIDING AN ADEQUATE INCENTIVE FOR THE OWNERS OF THE PIPELINE TO MINIMIZE COSTS CON-

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SISTENT WITH SOUND PIPELINE MANAGEMENT. THE PARTIES SHALL NOT IMPEDE THE RAISING OR GUARANTEE OF DEBT IN PRIVATE CAPITAL MARKETS FOR THE CONSTRUCTION OF THE PIPELINE.

5. TAXATION.

(A) THE PARTIES REITERATE THEIR COMMITMENTS UNDER THE PIPELINE TREATY WITH RESPECT TO NON-DISCRIMINATORY TAXATION, AND NOTE IN THAT REGARD THE SPECIFIC UNDERTAKING ATTACHED AS ANNEX 3 WITH RESPECT THERETO BY THE PROVINCES OF BRITISH COLUMBIA, ALBERTA AND SASKATCHEWAN. THE PRINCIPLES GOVERNING TAXATION OF THE PIPELINE IN THE YUKON ARE SET FORTH IN ANNEX 3. THE LEVEL OF TAXATION BY THE YUKON TERRITORY SHALL NOT EXCEED (INSERT FORMULA BASED ON RESEARCH INTO PROVINCIAL LEVELS OR STANDARD OF REASONABLENESS.)

(B) ANY SPECIAL FUND ESTABLISHED FOR THE PURPOSE OF MEETING THE INDIRECT COSTS OF THE SOCIO-ECONOMIC IMPACT

OF THE PIPELINE SHALL BE USED SOLELY FOR PURPOSES SPECIFIED IN ANNEX 3 AND SHALL BE FUNDED SOLELY FROM TAX RECEIPTS. ANY PREPAYMENT OF TAXES BY THE PIPELINE OWNERS FOR PURPOSES OF FUNDING SUCH COSTS SHALL NOT EXCEED \$ (OR SHALL NOT EXCEED AN AMOUNT REASONABLY EXPECTED TO BE AMORTIZED OVER A PERIOD OF (10?) YEARS), AND THE TAXPAYER SHALL RECEIVE A CREDIT, INCLUDING PROVISION FOR AN APPROPRIATE RATE OF INTEREST, AGAINST SUBSEQUENT TAX LIABILITY.

6. CONTENT OF EQUIPMENT, ETC.

NATIONALS OF EACH PARTY SHALL HAVE FULL OPPORTUNITY TO COMPETE FOR THE SUPPLY OF EQUIPMENT, MATERIALS, SUPPLIES, CONFIDENTIAL

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LABOR AND SERVICES USED IN CONNECTION WITH THE CONSTRUCTION AND OPERATION OF THE PIPELINE. IT IS UNDERSTOOD THAT EACH PARTY DESIRES THAT ITS NATIONALS HAVE A SIGNIFICANT PARTICIPATION IN THE CONSTRUCTION AND OPERATION OF THE PIPELINE, AND THAT ACCORDINGLY THEY MUST BE AFFORDED A REASONABLE AND ADEQUATE OPPORTUNITY TO COMPETE FAIRLY AND WITHOUT DELAYING THE PROJECT. THE REPRESENTATIVES APPOINTED IN ACCORDANCE WITH PARAGRAPH 8 SHALL ESTABLISH A SUBGROUP FOR THE SPECIFIC PURPOSE OF MONITORING COMPLIANCE WITH THIS PARAGRAPH AND FACILITATING THE COMPETITION CONTEMPLATED HEREBY.

7. INTERRELATIONSHIP OF REGULATORY AUTHORITIES.

THE RESPECTIVE REGULATORY AUTHORITIES OF THE PARTIES SHALL CONSULT FROM TIME TO TIME FOR THE PURPOSE OF CARRYING OUT THE TERMS OF THIS AGREEMENT, PARTICULARLY THE PROVISIONS OF PARAGRAPHS 3 AND 4 RELATING TO TARIFFS FOR THE TRANSPORTATION OF NATURAL GAS THROUGH THE PIPELINE.

8. COORDINATION AND CONSULTATION.

EACH PARTY SHALL DESIGNATE (THREE?) LIAISON REPRESENTATIVES FOR THE PURPOSE OF CARRYING ON PERIODIC CONSULTATIONS ON THE IMPLEMENTATION OF THIS AGREEMENT AND THE CONSTRUCTION AND OPERATION OF THE PIPELINE. THE REPRESENTATIVES OF THE PARTIES. INDIVIDUALLY OR AS A GROUP, MAY MAKE RECOMMENDATIONS WITH RESPECT TO PARTICULAR DISPUTES OR OTHER MATTERS, AND MAY TAKE SUCH OTHER ACTION AS MAY BE MUTUALLY AGREEABLE FOR THE PURPOSE OF FACILITATING THE CONSTRUCTION AND OPERATION OF THE PIPELINE OR THE IMPLEMENTATION OF THIS AGREEMENT.

9. COMPLIANCE WITH TERMS AND CONDITIONS.

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THE TERMS AND CONDITIONS IN THIS AGREEMENT APPLICABLE DIRECTLY TO THE CONSTRUCTION, OPERATION AND EXPANSION OF THE PIPELINE SHALL BE IMPLEMENTED BY THE PARTIES THROUGH THE IMPOSITION OF SUCH TERMS AND CONDITIONS ON THE GRANTING OF REQUIRED AUTHORIZATIONS, AND IN THE EVENT OF SUBSEQUENT BREACH OF SUCH A TERM OR CONDITION BY AN OWNER OF THE PIPELINE OR ANY OTHER PRIVATE PERSON, THE PARTIES TO THIS AGREEMENT SHALL NOT HAVE RESPONSIBILITY THEREFOR, BUT SHALL TAKE SUCH ACTION AS IS REQUIRED TO REMEDY OR MITIGATE THE CONSEQUENCES OF SUCH BREACH.

10. ENTRY INTO FORCE.

THIS AGREEMENT SHALL ENTER INTO FORCE UPON SIGNATURE. VANCE

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